

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES SMITH, SALLY SMITH,)	
KAYLA ROTELLINI, MICHAEL)	Civil Action No. 2:19-cv-01672-WSS
ROTELLINI and ANTOINETTE)	
MACZKO,)	
)	
Plaintiffs,)	
)	
v.)	
)	
WASHINGTON AREA HUMANE)	
SOCIETY, a non-profit organization,)	
GENE KARCH, an individual, GLEN)	
THOMSON, an individual, and)	
MARANDA COMBS, an individual,)	
)	
Defendants.)	

**DEFENDANT GENE KARCH'S MOTION TO DISMISS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12 (b)(6)**

Defendant, Gene Karch, by and through his attorneys, Makel & Associates, LLC, hereby moves the Court to dismiss Plaintiffs' Complaint Pursuant to Federal Rule of Civil Procedure 12 (b)(6), and in support thereof, states the following:

1. On or about December 27, 2019 Plaintiffs filed a Complaint stemming from an investigation by the Washington Area Humane Society into alleged animal abuse. *See* Doc. No. 1.
2. Plaintiffs' Complaint alleges the following causes of action:
 - a. Count I - UNLAWFUL SEARCH AND SEIZURE in violation of 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution;
 - b. Count II - MALICIOUS PROSECUTION in violation of 42 U.S.C. § 1983 and the First Amendment to the United States Constitution;
 - c. Count III - RETALIATION in violation of 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution;

- d. Count IV - CONSPIRACY in violation of 42 U.S.C. § 1983 and the Fourth and First Amendments to the United States Constitution;
- e. Count V - TRESPASS under Pennsylvania common law;
- f. Count VI - TRESPASS TO CHATTEL under Pennsylvania common law;
- g. Count VII - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS under Pennsylvania common law; and
- h. Punitive damages.

3. Plaintiffs' Complaint fails to state a claim against Gene Karch for which relief may be granted.

4. Defendant Gene Karch is entitled to qualified immunity with regard to Plaintiff's § 1983 claims and immunity under Pennsylvania law with regard to the state law claims.

5. Plaintiffs' request for relief in the form of punitive damages must be stricken.

6. Pursuant to Fed. R. Civ. Pro. 12 (b)(6), Plaintiffs' Complaint should be dismissed for failure to state a claim upon which relief may be granted.

WHEREFORE, Defendant, Gene Karch, respectfully requests that this Honorable Court grant this Motion and dismiss Plaintiffs' Complaint and all claims therein, with prejudice.

Date: March 19, 2020

Respectfully Submitted,

MAKEL & ASSOCIATES, LLC

By: /s/ Christopher P. Furman

Christopher P. Furman, Esq.

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Attorneys for Defendant

Gene Karch

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been electronically filed and served with the Court's ECF System this 19th day of March, 2020 as follows:

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/s/ Christopher P. Furman